**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CIVIL APPELLATE SIDE**

**WRIT PETITION NO. 3125 OF 1996**

The Executive Secretary,
Kolhapur Church Council,
Kolhapur and anr. .... Petitioners

versus

Sanjay Lazarus Chopade and anr..... Respondent.

Shri S.M.Kamble for the petitioner.
Shri S.G.Surana for respondent no.1.

**CORAM; A.P. DESHPANDE, J.**
**DATED; 5TH JUNE, 2007**

**JUDGMENT;**

1. The present petitioner ( Kolhapur Church Council of United Church of Northern India) is a trust which runs few schools in KOlhapur and surrounding districts. The respondent no.1 was appointed as a junior clerk in the school administered by the petitioner with effect from 1986. The school wherein the respondent no.1 was appointed is Irvine Christian High School and the service conditions of the employees working therein are governed by the provisions of MEPS Act and the rules made thereunder.

2. It is the case of the petitioner that at the time of appointment of respondent no.1 as junior clerk,

there were two posts in the Irvine Christian High School, one was of senior clerk and another one was of junior clerk. Inspection was made by the officers of the Education Department and having regard to the strength of the students in the school, the post of senior clerk was not held admissible for grant in the year 1992. As the post of senior clerk was held to be inadmissible for the year 1992, the petitioner was faced with a situation wherein the senior clerk was rendered excess on account of inadmissibility of the post of senior clerk. The petitioner had to take a decision to reduce in rankthe incumbent working as senior clerk and in that process, the present respondent no.1 had to be displaced from the post of junior clerk. According to the petitioner, in the above facts situation, the petitioner had suggested to the respondent no.1 that there is a post of junior clerk vacant in Vengurla High School and he should accept the transfer and join in the post of junior clerk at Vengurla. According to the petitioner, as the respondent no.1 was not agreeable to the suggestion of transfer to Vengurla, he was issued letter of termination intimating him that his services are terminated with effect from 1-12-1992. The termination notice is dated 23-11-1992.

3. It is further the case of the petitioner that

after the notice of termination was served on the respondent no.1 the respondent no.1 requested for his reinstatement and showed his willingness to go to Vengurla on transfer. Hence by an order dated 14-12-1992 respondent no.1 was informed that his termination order was withdrawn and he has been reinstated in service and called upon him to resume his duty at Vengurla. The said decision, to reinstate the respondent no.1 as junior clerk and his transfer to Vengurla, is a composite communication dated 14-12-1992. However, the respondent no.1 instead of proceeding to the transferred place at Vengurla, chose to file an appeal before the School Tribunal, and challenged the order of termination dated 23-11-1992 when the said order was already revoked. The main contention of the petitioner is that as the termination was already cancelled and the order of transfer was issued on 14-12-1992 hence the appeal itself is not maintainable and was misconceived. If the respondent no.1 was aggrieved by the transfer order, he could have challenged the said order before appropriate forum. But the respondent no.1 had chosen not to challenge the order of transfer. It may be incidently stated that under section 9 of the MEPS Act the tribunal has no jurisdiction to entertain any challenge the transfer order. On the above facts situation, the tribunal proceeded to allow the appeal

vide its judgment and order dated 25-3-1996, which is impugned in the present petition. The tribunal after quashing and setting aside the termination order, granted reinstatement with full backwages.

4. This court, while issuing rule, granted interim relief in terms of prayer clause (b) i.e. stay of the execution of the judgment and order passed by the tribunal. However, it was clarified that it will be open to respondent no.1 to report for duty at his place of transfer at Vengurla. The said order was passed on 18-6-1996. It is not in dispute that the respondent no.1 did not report the place of transfer within the reasonable time. It was only after a period of five years elapsed from the date of passing of the interim order, the respondent no.1 moved an application seeking to join at his place of transfer but by then according to the petitioner, the post was already filled in.

5. The short question that falls for consideration in this writ petition is as to whether the appeal filed by the respondent no.1 before the tribunal was maintainable in law or was it misconceived in view of the issuance of the order of transfer on reinstatement of respondent no.1. As pointed out hereinabove t the petitioner had issued termination order on 23-11-1992

as the post of senior clerk was held to be inadmissible, having regard to the number of pupil in the school, which prompted the petitioner to reduce in rank senior clerk to the post of junior clerk and the respondent no.1 not being willing to accept the transfer to Vengurla, the petitioner issued the order of termination. It is only after the respondent no.1 came to know of the order of transfer dated 14-12-1992 which clearly shows that the order of termination was revoked, the respondent no.1 filed an appeal before the tribunal. What was sought to be challenged was the non- existing order of termination. If the respondent no.1 was aggrieved in any manner by the order of transfer, he could have challenged the same before appropriate forum and could not have indirectly questioned the legality thereof in the appeal before the tribunal, for the reason that the tribunal's jurisdiction is limited in the contingencies stipulated under section 9 of the Act. The record further reveals that the respondent no.1, was not willing to accept the transfer to Vengurla and hence did not join the post of junior clerk at the transferred place and that the termination order was not in existence when the appeal was filed. Thus the tribunal was not justifying in setting aside the non-existent order. The judgment and order passed by the tribunal is patently illegal and contrary to the

law. The tribunal has exercised jurisdiction not vested in it by law by quashing the nonexistent order of termination. The tribunal has also failed to consider the effect of order of reinstatement and transfer dated 14-12-1992. In my view the petitioner was justified in transferring the respondent no.1 to Vengurla as junior clerk as the post of senior clerk was held to be inadmissible and as a senior clerk was to be accommodated in the post of junior clerk by reducing him in the rank to which he had agreed. It is re-iterated that though this court while issuing rule permitted the petitioner to report for joining at Vengurla at the transferred place, he did not join at the transferred place and did not show his willingness atleast for a period of about five years, by which time the post was already filled in. The judgment and order passed by the tribunal is wholly unsustainable in law and facts of the present case, warranting interference by this court. I conclude that the order of termination dated 23-11-1992 was not in force on the date on which the appeal was filed by respondent no.1 before the tribunal as the same was revoked by order dated 14-12-1992. As such the appeal itself was misconceived. The tribunal has erred in allowing the said appeal and in granting reinstatement with full backwages to respondent no.1 when there does not exist any post in the school at Kolhapur to accommodate the

respondent no.1.

6. In the result, the judgment and order passed by the tribunal is quashed and set aside. Rule is made absolute in the above terms. There is no order as to costs.

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